Paper No. 12

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte JEAN VIAUD

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Appeal No. 2003-0588
Application 09/559,921

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ON BRIEF

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Before ABRAMS, FRANKFORT and NASE, Administrative Patent Judges.

FRANKFORT, Administrative Patent Judge.

## DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claim 12. Claims 1 through 11, the only other claims pending in the application, stand allowed.

As noted on page 1 of the specification, appellant's invention relates to bale wrapping implements and, more particularly, to such implements that are trailed from a large round baler and used to wrap bales ejected onto the device from the baler. Appellant notes that a problem exists with the costly configuration of known bale wrapping implements, and sets forth as an objective of the invention to provide a bale wrapping implement of "simple construction" which is coupled in trailing relationship to a baler so as to follow the contours of the ground. To that end, appellant's bale wrapping implement, best seen in Figure 1, comprises a main frame (22) supporting a bale wrapping arrangement (23). The main frame includes a first elongate, beam-like frame component (27) having its forward end journalled for vertical pivoting movement about the axle (20) of the baler (10), and a second elongate, beam-like frame component (28) coupled to the first frame component and carrying the bale wrapping arrangement (23) and bale support rolls (33) thereon.

On page 4 of the specification, appellant makes note that a support wheel (50) "is arranged at the first frame component 27 in the region of the center of gravity of the bale wrapping device 12 in the unloaded condition," i.e., when no bale is received on the rolls (33). A smaller auxiliary support wheel (54) is also provided at a free end (52) of the second frame component (28). In describing the auxiliary wheel (54), appellant indicates that such wheel "usually does not touch the ground when the bale wrapping device is unloaded." In further describing operation of the bale wrapping implement, at lines 13-21 of page 4, appellant notes that

> when the bale wrapping implement 12 is in a condition not loaded by a round bale and is towed by the baler 10, which is coupled to the towing vehicle, the bale wrapping device 12 is supported on the ground only by the support wheel 50, with the latter conforming automatically to the direction of operation established by the towing vehicle or the baler 10.

> The bearing support of the first frame component 27 on the axle 20 of the baler 10 permits vertical pivotal movement of the wrapping implement 12 in order to permit the implement to follow the contour of the ground, with the support wheel 40 [sic, 50] always remaining in contact with the ground.

As for the auxiliary wheel (54), appellant indicates in the paragraph bridging pages 4 and 5 of the specification that

> [d]uring the wrapping operation, that is, when the bale wrapping implement 12 is loaded by a bale delivered by the baler 10 after completion of the baling process, the bale wrapping implement 12 may also become supported on the ground by the auxiliary support wheel 54. Due to the additional weight of the bale, the auxiliary support wheel 54 can also briefly come into contact with the ground, for example, on soft ground, since the frame 22 can deflect torsionally in the region of its inherent flexibility. The frame 22 can then be supported on the ground by the auxiliary wheel 54, in order to prevent excessing twisting of the frame 22 and any ensuing damage.

Claim 12 on appeal reads as follows:

12. In a bale wrapping implement adapted for being coupled in trailing relationship to a baler, said implement including a frame having a forward end adapted for being coupled to a baler in such a way that it can be pivoted vertically, and a support wheel arrangement being coupled to said main frame for supporting it on the ground, the improvement comprising: said support wheel arrangement including only one support wheel mounted for continuous engagement with the ground during all conditions of operation of said wrapping implement.

The sole prior art reference of record relied upon by the examiner in rejecting claim 12 is:

Anderson et al. (Anderson '076) 6,082,076 July 4, 2000

Claim 12 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Anderson '076. The examiner is of the view that the bale wrapping implement of Anderson '076 is "adapted for being coupled in trailing relationship to a baler" (final rejection, page 2) and includes a support wheel arrangement (112) coupled to the main frame for supporting it on the ground, and that the

support wheel arrangement is mounted for engagement with the ground during all conditions of operation of the wrapping implement. The examiner concedes that the bale wrapping implement of Anderson '076 does not have or disclose a frame that can be pivoted vertically nor a support wheel arrangement including only one support wheel of the type set forth in claim 12 on appeal. In accounting for these differences, the examiner concludes that

> it would have been [an] obvious matter of design choice to have modified Anderson's bale wrapping apparatus by having that the frame can be pivoted vertically and that the support wheel arrangement including only one support wheel, since applicant has not disclosed that the frame can be pivoted vertically and that the support wheel arrangement including only one support wheel solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with more than one support wheel as suggested by Anderson [final rejection, pages 2-3].

Rather than reiterate any further details of the examiner's commentary regarding the above-noted rejection

and the conflicting viewpoints advanced by the examiner and appellant regarding the rejection, we make reference to the final rejection (Paper No. 7, mailed May 1, 2002) and the examiner's answer (Paper No. 10, mailed October 7, 2002) for the reasoning in support of the rejection, and to appellant's brief (Paper No. 9, filed August 16, 2002) for the arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to appellant's specification and to claim 12, to the applied prior art Anderson '076 reference, and to the respective positions articulated by appellant and the examiner. As a consequence of our review, we have made the determination which follows.

Having reviewed and evaluated Anderson '076, we share appellant's assessment of the rejection on appeal and

fully agree with appellant's views as expressed on pages 3 and 4 of the brief, which positions we adopt as our own. Like appellant, we do not see that the apparently large and cumbersome bale wrapping machine of Anderson '076 is, or would have been viewed by one of ordinary skill in the art as being "adapted for being coupled in trailing relationship to a baler," as required in claim 12 on appeal. In that regard, we note that Anderson '076 describes the multi-wheel support arrangements seen in Figures 1-5 and 10 of that patent as being "a machine mover 112 which enables the machine 300 to move along a ground surface during the wrapping operation of bales" (col. 2, lines 45-50). In contrast to the examiner's position, we see nothing in the applied patent which discloses coupling of the bale wrapping machine to a baler in trailing relationship thereto, or in any way implies the capability to do so. Nor do we see any reason why such an arrangement would have

been required in the apparently autonomous bale wrapping machine of Anderson '076.

In addition, we see absolutely no basis to conclude that one of ordinary skill in the art would have found it to have been a mere matter of obvious design choice 1) to have a forward end of the frame in Anderson '076 "adapted for being coupled to a baler in such a way that it [the frame of the bale wrapping implement] can be pivoted vertically," or 2) to provide the bale wrapping machine of Anderson '076 with a support wheel arrangement "including only one support wheel mounted for continuous engagement with the ground during all conditions of operation of said wrapping implement," as recited in appellant's claim 12. The examiner's comments in the final rejection and answer with regard to these aspects of the rejection before us on appeal are based on erroneous fact finding, hindsight, speculation and conjecture.

In light of the foregoing, the decision of the examiner to reject claim 12 under 35 U.S.C. § 103(a) based on Anderson '076 is reversed.

REVERSED

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| NEAL E. ABRAMS<br>Administrative Patent Judge | ) | |
| CHARLES E. FRANKFORT<br>Administrative Patent Judge | ) | BOARD OF PATENT APPEALS AND INTERFERENCES |
| JEFFREY V. NASE<br>Administrative Patent Judge | ) | |

CEF:psb

Jimmie R. Oaks
Patent Department
Deere & Company
One John Deere Place
Moline, IL 61265-8098